

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

AMERICAN RED CROSS BLOOD SERVICES
SOUTHERN CALIFORNIA REGION

Employer¹

and

Cases 21-RC-20885
21-RC-20886

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 535, and TEAMSTERS LOCAL 63
GENERAL TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Joint Petitioners

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record² in this proceeding, the undersigned makes the following findings and conclusions.³

1 The Employer's name appears as amended at hearing.

2 The Employer and the Petitioners timely filed briefs, which were duly considered.

3 The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organizations involved claim to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

I. SUMMARY

The Employer collects, processes, and distributes blood and blood products. Service Employees International Union, Local 535, and Teamsters Local 63, General Truck Drivers, Warehousemen and Helpers, International Brotherhood of Teamsters, jointly referred to as “Petitioners,” jointly filed petitions with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent two separate units of the Employer’s employees.

In Case 21-RC-20885, Petitioners seek to represent a unit consisting of all registered nurses and licensed vocational nurses at the Employer’s facilities located at 7675 Mesa College Drive, San Diego, California (the “Kearny Mesa facility”), and 460 East Pennsylvania Avenue, Escondido, California (the “Escondido facility”), jointly called the “facilities” herein, and excluding all nonprofessional employees, office clerical employees, telemarketers, confidential employees, guards, and supervisors as defined in the Act.

In Case 21-RC-20886, Petitioners seek to represent a unit of all medical assistants and mobile operators at the facilities, and excluding office clerical employees, telemarketers, confidential employees, professional employees, guards, and supervisors as defined in the Act.

The Employer contends that the two units sought by the Petitioners are inappropriate and that there should instead be one overall unit, a wall-to-wall unit. The Employer asserts that in addition to the petitioned-for classifications, the following nonprofessional classifications and departments should be included in the single appropriate unit: the electronic blood donor records (EBDR) coordinator, logistics

coordinator, hospital services employees, document control employees, administrative assistants, donor recruitment employees (which include customer service representatives, account managers, business development representatives, donor recruitment associates and volunteer coordinators), the scheduler, the department education coordinator (DEC), and the apheresis coordinator.

Second, the Employer contends that the registered nurses (“RNs”) it employs as charge nurses are supervisors as that term is defined in the Act. Third, the Employer contends that the RNs that are not classified as charge nurses should be a professional voting group in the overall unit with the option to vote for inclusion in a *Sonotone* election.⁴ Finally, the Employer argues that if the Region finds the charge nurses to be RNs and not supervisors as defined in the Act, they should be classified as a professional voting group in the overall unit with the option to vote for inclusion in a *Sonotone* election.⁵

The Petitioners contend that the petitioned-for nonprofessional unit is a distinct and homogenous group of employees with interests separate from those of other employees, and thus, an appropriate unit for the purposes of collective bargaining. Petitioners further contend that the petitioned-for professional unit is an appropriate unit and that there is no authority under which to require a unit of professional employees to vote for inclusion in a nonprofessional unit.

⁴ *Sonotone Corp.*, 90 NLRB 1236(1950).

⁵ The Employer makes the additional argument that the fact that each petition is signed by a different attorney suggests that if there is a certification, Petitioners will divide up the units in their traditional sense and will not bargain as joint representatives. For these reasons, the Employer argues that the joint petitions are inappropriate and that the Petitioners should decide which union is going to represent which bargaining unit. The Employer presented no evidence showing any unlawful or inappropriate intentions by either Petitioner or that the joint petitions are inappropriate. As such, I find nothing that would invalidate the Petitioners’ status as joint petitioners.

Based on the record as a whole and the parties' briefs, I find that the petitioned for units are appropriate, with the exception that licensed vocational nurses ("LVNs") will be included in the nonprofessional unit rather than the professional unit. Additionally, I conclude that the charge nurses employed by the Employer in its San Diego region are not supervisors as defined in the Act. Finally, the charge nurses will be included in the petitioned-for professional unit.

Below, I have set forth the record evidence concerning the Employer's operations and, more specifically, the evidence concerning the factors the Board considers when determining unit appropriateness for the issues in dispute. Following the presentation of the evidence for each issue in dispute, I have applied the Board's legal standards to the evidence. The decision concludes with a direction of election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE

A. The Employer's Operations

The American Red Cross Blood Services recruits donors, collects their blood, and then processes and supplies blood and blood products to hospitals. The Employer, headquartered at a facility in Pomona, California, provides a blood supply to the three counties in its region: Los Angeles County, Orange County, and San Diego County. The Employer also maintains 14 fixed collection sites, two fixed distribution sites, and 20-25 mobile sites every day. About half of the Employer's blood products are collected through mobile blood drives that are conducted almost daily throughout the Employer's region.

Of the 14 fixed collection sites in the Employer's region, two are located in San Diego County: the Kearny Mesa facility and the Escondido facility. The Employer also operates between two and five mobile sites in San Diego County on a daily basis.

The Employer's chief executive officer (CEO) is responsible for the overall operations within its region. The Employer's operations in San Diego County are divided into four separate operating units: (1) Donor Recruitment Department ("DRD"); (2) Whole Blood Collections ("Collections"); (3) Automated Apheresis Collections ("Apheresis"); and (4) Hospital Services. Each of these departments has its own department head and separate lines of supervision.

The Employer's blood-collection process in San Diego County begins with donor recruitment, performed primarily by staff within the Donor Recruitment Department. Collections employees, including RNs, an LVN, medical assistants, and mobile operators, run the mobile blood drives as well as the blood drives at the Employer's fixed donor sites. A single RN, operating as a charge nurse, is the lead on-site employee at mobile sites.

Apheresis employees are responsible for automated apheresis collections. Apheresis is the process by which the Employer uses a machine to draw blood from donors, separate the blood into its different components, harvest wanted portions, and return the remaining portions of the blood into the donor. Apheresis collections only take place at fixed sites.

After blood and blood products are collected by either Collections or Apheresis, the hospital services department takes finished blood products, stores them, and then distributes them to the different hospitals in the Employer's region.

The Employer also employs individuals that are not involved with the actual blood collection process: the EBDR Coordinator, the logistics coordinator, the document control employee, the scheduler, the DEC clerk, and two administrative assistants employed by the Employer in San Diego County.

B. Classification Descriptions

Petitioners seek a professional unit made up solely of RNs and LVNs. Petitioners also petitioned for a nonprofessional unit, made up solely of nonprofessional collections employees: medical assistants and mobile operators. The specific job classifications, functions, and duties of the petitioned-for employees, as well as those the Employer seeks to include in its proposed unit, are set forth below:

LVNs: The Employer employs one LVN in San Diego County. An LVN goes through some schooling and receives a license. An LVN's training is of a higher degree than that of a medical assistant. But the training of an LVN is not as rigorous as that of an RN.⁶ In San Diego, the Employer's LVN draws whole blood and also uses the apheresis machines to draw and collect blood. An LVN is not qualified to serve as a charge nurse, as only RNs can serve in that position under California law. Further, an LVN cannot legally operate an apheresis machine without an RN present. The record does not reflect that the LVN performs any duties in addition to those performed by medical assistants. Normally, LVNs fall under the supervision of teams supervisors.

⁶ The record is unclear as to which departments of the State government issue licenses to LVNs and RNs, though it appears that they hold different licenses. RNs are required to go through longer and more rigorous schooling and training. Medical assistants are not licensed by the State of California.

However, there are currently no team supervisors employed in San Diego County. Presumably, in the absence of a team supervisor, the Interim Assistant Director for Whole Blood Collections (“Interim Assistant Director for Collections”) supervises the LVN when she is performing whole blood collections, although the record is not clear in this respect. The record reflects that charge nurses have some authority over the LVN.

RNs: The Employer employs about 15 RNs in San Diego County. Of those 15 RNs, approximately 12 are considered charge nurses. RNs can do all of the work performed by LVNs, including drawing blood. However, RNs receive more rigorous training than LVNs, and as such, are qualified to perform a wider range of duties. Only RNs can legally operate apheresis collections without supervision. For this reason, RNs working in apheresis collections serve as collection specialists, while LVNs and medical assistants can only serve as collection technicians. Further, California law requires that an RN be present at any collection site.

Only RNs can serve as charge nurses. Charge nurses serve as lead employees at mobile and fixed sites, deciding the logistics of the site (including where particular stations, such as venipuncture and medical history, should be set up). Charge nurses assign tasks to other members of collection teams, but also perform the tasks performed by LVNs and medical assistants, such as taking medical histories and drawing blood. A single charge nurse is assigned to each collection site, with a team of collections employees reporting to that charge nurse.

Medical Assistants: The Employer employs approximately 31 medical assistants in San Diego County. Medical assistants are paid at an hourly rate. Medical assistants are trained and licensed in phlebotomy, which is the act of sticking the needle

into a vein and drawing blood. Some medical assistants work at the fixed sites, but a majority of them are assigned to work at the mobile collection sites. The medical assistants' main duty is to actually draw the blood from the donors at either mobile or fixed sites. Medical assistants also register blood donors and take their health histories. Medical assistants also prepare the equipment used in the actual blood collection. At the end of a mobile drive, medical assistants clean up the medical-history booths and the venipuncture area.

At the fixed sites, medical assistants serve as collection technicians, doing both whole blood and apheresis collections. Only some medical assistants have taken sufficient training to be qualified to use the apheresis machine, although medical assistants cannot conduct an apheresis operation without an RN present. Whole-blood collections at the fixed sites are basically the same as at the mobile drives, with a needle being inserted into a donor's vein and blood being drawn out and collected in a bag.

Medical assistants fall under the supervision of team supervisors. Like mobile operators, they are currently supervised by the Interim Assistant Director of Collections.⁷ Charge nurses also have some authority over medical assistants.⁸

Mobile Operators: The Employer employs six mobile operators in San Diego County. Mobile operators are paid at an hourly rate. They are responsible for driving the vehicles used to transport staff and equipment to mobile collections sites. Each mobile operator is required to have a Class B driver's license and to be certified with the Department of Transportation. Mobile operators work directly with RNs and medical assistants at the mobile collection sites. The record reflects that mobile operators

⁷ The two team supervisor positions both have vacancies.

⁸ The extent of this authority will be discussed in greater detail below.

are normally supervised by team supervisors. Thus, they are currently supervised by the Interim Assistant Director for Collections, who is the person that team supervisors would also report to. The record also reflects that charge nurses have some authority over mobile operators at the collection sites.⁹

The equipment and supplies for the blood drive are prepared and packaged at the Escondido facility by the mobile operators before the arrival of the rest of the collection staff. Once the collection staff arrives at the Escondido facility, the mobile operators transport the equipment and staff to the different mobile collection sites. Upon arrival at a particular site, the medical assistants help the mobile operators unload equipment and supplies and to set up the site.

After the site is set up, mobile operators are assigned the task of sealing and packing the blood units taken by the rest of the collection staff. Mobile operators also assist the rest of the collection staff in preparing the bags used for collecting blood. When needed, mobile operators also assist with lifting donors onto beds and greeting donors as they arrive at the mobile sites. Once a mobile drive ends, mobile operators assist in the general cleanup of the site, which includes taking down the awning, and folding and putting away chairs.

Apheresis Coordinator: The Employer employs one apheresis coordinator in San Diego County. Her basic job duties are to secure apheresis donor appointments for the collection staff at the facilities. She also does telemarketing with donors to try to secure donations. The apheresis coordinator does not participate in the actual collection of blood at either fixed or mobile sites.¹⁰

⁹ The extent of this authority will be discussed in greater detail below.

¹⁰ The parties stipulated to the exclusion of telemarketers from the unit found appropriate.

Donor Recruitment Department: The Donor Recruitment Department

(“DRD”) in San Diego County is made up of five account managers, one donor recruitment associate, one volunteer coordinator, and one customer service representative. All of the DRD employees, with the exception of the volunteer coordinator, are supervised by Associate Director Vicki Furnett. None of the DRD employees assist in the actual collection of blood at either fixed or mobile sites.

The account managers are responsible for the recruiting of blood donors for various mobile drives. They typically work with organizations in putting together blood drives. Occasionally, account managers attend blood drives and assist in recruiting donors and in addressing logistical problems with the sponsors of the blood drives. These are salaried employees that can receive bonuses based on production.

The donor recruitment associate (“DRA”) is responsible for getting new accounts and will occasionally attend blood drives. When attending blood drives, the DRA serves to flag down donors to give blood the day of a particular drive. The DRA is a salaried employee that can receive bonuses based on production.

The volunteer coordinator is responsible for recruiting volunteers to work at specific blood drives. The volunteer coordinator also conducts volunteer training and will sometimes fill in for volunteers that fail to show up at blood drives. The volunteer coordinator is supervised by the volunteer services manager. The volunteer coordinator is a salaried employee, but cannot receive bonuses.

The customer service representative does mainly administrative work within the Kearny Mesa facility, including bundling paperwork, ensuring that supplies such as posters and fliers are put together for the blood drives, and dealing with issues

associated with the Employer's electronic scheduling system. They do not generally attend blood drives.

Hospital Services: There are approximately 9 hospital service employees in San Diego County, all of whom work out of the Kearny Mesa facility. These employees are responsible for the storage and distribution of already-collected blood products. Hospital services employees all report to Supervisor of Hospital Services Jody Clifton.

Hospital service employees are classified as either tech 1 or tech 2 employees. Tech 2 employees function as dispatchers, answering telephones, taking orders for blood, and answering customer questions. Tech 1 employees are entry-level employees in the hospital services department and, along with Tech 2 employees, fill, pack, and prepare orders for delivery. Though hospital service employees might on occasion attend blood drives, they do not assist in the actual collection of blood. They occasionally interact with collections employees when collections employees deliver collected blood to the hospital services floor.

Scheduler: There is one scheduler employed by the Employer in San Diego County. The scheduler works out of the Escondido facility and is paid at an hourly rate. The scheduler is responsible for staffing the mobile blood drives. The scheduler also prepares and distributes the schedules for the collections employees. Collections staff notify the scheduler if they are unable to work or if they need time off for any reason. The scheduler does not participate in the collection of blood at either fixed or mobile sites. The record does not reflect who supervises this employee.

Department Education Coordinator (DEC): The Employer employs one DEC in San Diego County. The DEC is responsible for training all incumbent staff and ensuring that they are up to date on the training needed for their respective jobs. The DEC does not participate in the collection of blood at either fixed or mobile sites. The record does not reflect who supervises this employee.

Document Control Employee: There is one document control employee in San Diego County. She works out of both fixed facilities in San Diego County. Her role is to maintain and distribute various documents that the Employer requires its employees to read and sign. She is also responsible for the quality control and maintenance of the collection equipment. The document control employee does not participate in the collection of blood at either fixed or mobile sites. The record does not reflect who supervises this employee.

EBDR Coordinator: The EBDR specialist works at the Escondido facility. He maintains the Employer's computers and software used at the facilities and the mobile blood sites. He occasionally goes to mobile sites to troubleshoot problems or to deliver replacement equipment. The EBDR coordinator does not participate in the collection of blood at either fixed or mobile sites. The record does not reflect who supervises this employee.

Logistics Coordinator: The logistics coordinator works out of the Escondido facility and deals with all aspects of building maintenance at the facilities in San Diego County. This employee also maintains the fleet of vehicles used to transport supplies and staff to mobile blood sites. The logistics coordinator does not participate in

the collection of blood at either fixed or mobile sites. The record does not reflect who supervises this employee.

Administrative Assistants: The Employer employs two administrative assistants in San Diego County: one in the Escondido facility and one in the Kearny Mesa facility. The Kearny Mesa administrative assistant's duties include assisting with paperwork for accounts receivable, answering the phones, and serving as a liaison between San Diego employees and the Employer's human resources department located in Pomona. The Escondido administrative assistant's main duty is to coordinate special collections. That is, she schedules special collections with physicians and donors. Neither administrative assistant participates in the collection of blood at either fixed or mobile sites.

All of the Employer's employees are covered by the same personnel policies, employee handbook, and benefits package.

III. Analysis

The Employer contends that the petitioned-for units, divided between professionals and nonprofessionals, and including only those employees involved in the collection of blood, are not appropriate, and that the only appropriate unit should also include all nonsupervisory employees in the four departments discussed herein: DRD, Collections, Apheresis, and Hospital Services, and the other classifications discussed above. Although the employees in these departments share some terms and conditions of employment and may constitute an appropriate unit, the Board has substantial discretion in determining what is an appropriate bargaining unit. In the health care industry, as in

any other, unions are not required to organize in the most comprehensive unit available, but need only select an appropriate unit. *Faribault Clinic*, 308 NLRB 131, 133 (1992)(citing *Newington Children's Hospital*, 217 NLRB 793 (1975)).

The Board elucidated its policy for determining appropriate units in *The Boeing Company*, 337 NLRB 152 (2001):

The Board's procedure for determining an appropriate unit is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry in the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn.2 (7th Cir. 1997).

In evaluating the appropriateness of a unit, the Board examines whether the employees in the proposed unit share a community of interest. The community-of-interest analysis focuses on the following factors: (1) functional integration; (2) frequency of contact with other employees; (3) interchange with other employees; (4) degree of skill and common functions; (5) commonality of wages, hours and other working conditions; and (6) shared supervision. *Publix Supermarkets, Inc.* 343 NLRB No. 109 at 3 (2004).

The Employer argues that in making its analysis, the Board should apply the "disparity of interests" test from *Syracuse Region Blood Center*, 302 NLRB 72 (1991), because the Employer is a health care institution. But in *Park Manor Care Center*, 305 NLRB 872 (1991), a case decided after *Syracuse*, the Board set forth the

“empirical community of interest test” for nonacute health care facilities.¹¹ *Allen Health Care Services*, 332 NLRB 1308, 1309 fn. 4 (2000). Under the *Park Manor* test, the Board considers community-of-interest factors, as well as those factors considered relevant by the Board in rulemaking proceedings on collective-bargaining units in the health care industry. The Board further considers prior cases involving either the type of unit sought or the type of health care facility in dispute. *CGE Caresystems, Inc.*, 328 NLRB 748 (1999).

Because the Board did not consider blood banks in its rulemaking procedures, (see *Collective Bargaining Units in the Health Care Industry*, 284 NLRB 1528 (1988) and 284 NLRB 1579 (1989)), it is vital that the Board consider prior cases involving blood banks in determining appropriate units here.

The Board has consistently found less than wall-to-wall units appropriate for collective bargaining in the health care industry generally and in the blood bank industry in particular. In *Faribault Clinic*, supra, the Board rejected the employer’s request for a wall-to-wall unit and found that a unit of only technical employees was appropriate. In *Sacramento Medical Foundation Blood Bank*, 220 NLRB 904 (1975), and *Greene County Chapter American Red Cross*, 221 NLRB 776 (1975), cases both involving blood banks, the Board rejected employer arguments seeking broad units, instead finding narrow units justified by community-of-interest factors. The Board has also approved units consisting solely of collection employees in the blood bank industry. *Midwest Region Blood Services*, 324 NLRB 166 (1997). Additionally, an analysis of the traditional community-of-interest factors confirms that units limited to collections

11 The parties stipulated that the Employer is a nonacute health care facility.

employees are appropriate.¹² These factors are considered below on a classification-by-classification basis.

A. Case 21-RC-20885: The Petitioned-for Professional Unit

The Petitioners seek a unit of professional employees consisting of RNs and LVNs. While the RNs employed by the Employer are an appropriate unit themselves, the petitioned-for unit is inappropriate because LVNs have been considered technical employees, rather than professional employees, by the Board. Petitioners provided no evidence or any persuasive argument that an LVN is a professional employee.¹³ Accordingly, the professional unit will consist solely of RNs, and LVNs will be considered in the nonprofessional unit below.

B. Case 21-RC-20886: The Petitioned-for Nonprofessional Unit

Employees involved in collecting blood

The medical assistants and the LVN share a strong community of interest. They share the same type of supervision in that all employees involved in collecting blood are normally assigned to the supervision of a team supervisor. Further, in the absence of a team supervisor, employees in these classifications are supervised by the

¹² The Board also considers past bargaining history between parties in determining appropriate units. *Washington Palm, Inc.*, 314 NLRB 1122, 1127 (1994). The parties stipulated to an extensive bargaining history at the Employer's Pomona headquarters. At that headquarters facility, charge nurses are in the bargaining unit. But there is insufficient evidence in the record reflecting the duties of each of the classifications set forth in any existing contracts, to serve as a functional comparison to the classifications discussed here. Thus, I will not rely on this factor in making my determinations regarding the appropriate units in these cases.

¹³ Not only are LVNs not professional employees, but they share a stronger community of interest with the medical assistants and mobile operators than they do with RNs. Unlike RNs, LVNs cannot serve as charge nurses or legally operate collection sites without supervision. The Petitioners' argument that an LVN's licensure closely ties her to a community of interest with RNs is not persuasive.

Interim Assistant Director of Collections. There is also a high degree of contact and functional integration among these employees. They are all involved in the processing of donors and collection of their blood and related products. They work together at the apheresis collections sites. At blood donation operations they have similar skills and operate the same equipment and devices. In fact, the record does not reflect any differences in the duties performed by medical assistants and LVNs.¹⁴

The mobile operators also share a strong community of interest with the medical assistants and LVNs. They share the same supervision and work at the same mobile sites as medical assistants on a daily basis. The mobile operators are actually part of the blood-collection process, as they seal, pack, and label the blood units collected by medical assistants and LVNs. In fact, their entire function is to directly support the mobile blood-collection operations. They work side by side with medical assistants and often assist them in preparing the bags used in the blood-collection process. Though they are not licensed phlebotomists and do not directly draw blood, mobile operators' functions are highly integrated with the functions of the medical assistants. Accordingly, mobile operators, medical assistants, and the LVN are included in the appropriate bargaining unit.

DRD Employees

Although DRD employees have frequent contact with the collections employees and their work is functionally integrated with the collections employees in the sense that donors must be recruited so that the collections employees can perform their

¹⁴ The record does not reflect whether the lone LVN goes on mobile drives or if she only works at fixed sites.

work, their interests are sufficiently distinct so as not to require the inclusion of the DRD employees in the nonprofessional unit.

The DRD employees are separately supervised in a distinct department and their skills, training, and functions are entirely different. Many of the employees in this department are eligible for bonuses tied to their sales-type functions. These bonuses are not available to collections employees. Further, though DRD employees occasionally visit mobile sites, their main work sites are not the same as those of collections employees.

The Employer relies on the decision in *J.C. Penney Co., Inc.*, 328 NLRB 766 (1999), in support of its request for a broader unit. There, the Board included telemarketers over the petitioner's objections because the telemarketers: (1) shared common wage scales, benefits, and personnel policies with unit employees; (2) worked in the same physical location; (3) attended common meetings as other included employees; (4) had similar skills to other included employees; (5) performed similar functions to unit employees in some of the included departments; and (6) there was evidence of substantial contact and interchange between the telemarketers and employees in other included departments.

J.C. Penney is plainly distinguishable from the present cases. While DRD employees do share the same benefits, have some contact with and fall under the same personnel policies as collections employees, there is no evidence of a common wage scale. Further there is no evidence of any interchange between DRD and collections employees, or evidence that DRD employees have ever done any collections work. Additionally, no evidence was presented showing that any common functions are

performed by the included employees and the DRD employees. In fact, no evidence was presented showing that DRD employees are qualified to do collections work. .

Accordingly, I do not find that the DRD employees share a sufficient community of interest with the collections employees to mandate their inclusion in the petitioned-for unit, and I shall exclude them from the unit.

Hospital Services

The Hospital services employees do not share a close enough community of interest with collections employees to mandate their inclusion in the petitioned-for unit. The hospital services employees are not involved in the actual collections work; they perform different functions and are in a separate department with separate supervision. The incidental contact that occurs with the delivery of blood and the fact that they are also part of the overall operations of the Employer are not sufficient to require their inclusion in the unit.

Remaining Classifications

The Employer seeks to include the apheresis coordinator, the scheduler, the department education coordinator, the document control employee, the EBDR coordinator, the logistics coordinator, and the administrative assistants in the petitioned-for unit. Though some of these employees assist in scheduling collections, they do not share sufficient qualifications, training, or skills to mandate their inclusion. As with the DRD employees, employees in these classifications do no collections work, perform no common functions with collections employees, and there is no evidence of any interchange with collection employees.

Although these employees share some interests with the collections employees, mainly health and insurance benefits, and have some interaction with collection staff, they share the same interests with all employees of the Employer and therefore their interests are not specifically aligned with those of the collections employees. Though these employees may themselves share a sufficient community of interest to constitute an appropriate unit, there is insufficient evidence to establish a community of interest between these classifications and the petitioned-for unit that would mandate their inclusion in the unit.

Based on the above, the Employer's request for a wall-to-wall unit is denied.¹⁵ The nonprofessional unit will consist solely of medical assistants, the LVN, and the mobile operators. The employees in the remaining departments and classifications lack a sufficient community of interest to mandate their inclusion in the unit.

III. SUPERVISORY STATUS OF CHARGE NURSES

A. General Legal Standards

1. Section 2(11)

Section 2(11) of the Act defines "supervisor" as:

¹⁵ The Board has held that a mixed professional-nonprofessional employee unit cannot be found, as a matter of law, to be the sole appropriate unit for collective bargaining. *South Hills Health Systems Agency*, 330 NLRB 653 (2000). The Employer correctly states in its brief that professional employees can vote for inclusion in a mixed professional-nonprofessional unit. *Sonotone Corp.*, 90 NLRB 1236 (1950); *Leedom v. Kyne* 358 U.S. 184 (1958). However, there has been no showing that the professional employees seek to be part of a mixed unit. Further, the Board cannot compel professional employees to vote in a *Sonotone* election, when a petitioner has not sought to represent a mixed unit and where no interest in such a mixed unit has been shown by the employees. Thus, a wall-to-wall mixed unit is not an appropriate unit and a *Sonotone* election is not appropriate.

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is properly read in the disjunctive, and places an employee

In *NLRB v. Health Care Retirement Corp.*, 511 U.S. 571, 574 (1994) the Supreme Court set forth the general test to determine supervisory status: (1) whether the employee possesses the authority to engage in any one of the 12 criteria listed in Section 2(11); (2) whether the employee exercises such authority that requires the use of independent judgment; and (3) whether the employee holds authority in the interest of the employer:

2. The Burden of Proof

The burden of proving supervisory status lies with the party asserting that supervisory status. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). As the Petitioners argue, the Board has cautioned against construing supervisory status too broadly because once an employee is deemed to be a supervisor, the employee loses the protection of the Act. *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999), (citing *East Village Nursing & Rehabilitation Center v. NLRB*, 165 F.3d 960, 963 (D.C. Cir. 1999)).

Further, any lack of evidence in the record is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535 fn. 8 (1999). Where evidence is in conflict or otherwise inconclusive of a given indicia of supervisory status, the Board has held that supervisory status has not been established with respect to that indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490

(1989). Along these lines, mere inferences or conclusory statements without supporting evidence are insufficient to establish supervisory authority. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004).

B. The Employer has failed to meet its burden in establishing that charge nurses are supervisors within the meaning of the Act.

The Employer contends that the charge nurses are supervisors because they perform many of the same duties performed by team supervisors in other Red Cross regions. According to the Employer, charge nurses have the authority to assign work; to responsibly direct employees; to discipline employees and to effectively recommend such actions; to reward employees through evaluations leading to wage increases; and to adjust grievances. The Employer does not contend, nor does the record reflect, that charge nurses have the authority to hire, transfer, promote, lay off, suspend, terminate, or recall employees.

1. The authority to assign and responsibly direct

The Employer has not established that charge nurses are supervisors under Section 2(11) of the Act. The Employer maintains that charge nurses are responsible for assigning each staff member his or her duties for the day and for instructing staff when to rotate duties. Second, the Employer contends that charge nurses decide when employees will take breaks. Finally, the Employer claims that charge nurses have the authority to send team members home early.

The record evidence shows that the assignment of work done by charge nurses does not require independent judgment. Initially, the employees assigned to mobile teams are not chosen by the charge nurse, but are picked by the scheduler. Charge nurses determine which collection employee will be assigned to the different

positions, be it the history booth or the venipuncture (blood-drawing) area, at the beginning of a blood drive. The charge nurse also sets the schedule for the rotation of the employees working at the site. That is, the Employer's policies require that the collections employees (in this case, RNs, medical assistants) rotate between the different line positions on a drive. Supervisory status is demonstrated where selection of a particular employee for a task would require independent judgment. See *Palagonia Bakery Co., Inc.*, 339 NLRB 515, 535 (2003)(citing *Bozeman Deaconess Foundation*, 322 NLRB 1107 (1997)).

In the instant case, the employees on any given team are assigned only to those positions for which they are qualified. Further, if an employee is qualified for a particular line position, the Employer's policies dictate that the employee rotate into that position during the workday. Thus, the record evidence does not show that charge nurses exercise independent judgment in assigning and rotating employees into different line positions. This lack of record evidence is construed against the Employer. *Elmhurst Extended Care Facilities*, 329 NLRB 535 fn. 8 (1999). The degree of independent judgment used by charge nurses is further reduced by the fact that they only direct employees to perform routine, repetitive tasks. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002).

Second, the charge nurses' alleged authority to assign breaks does not show independent judgment. The mobile operator who testified at hearing stated that she normally does not need to seek permission to take breaks, but rather informs the charge nurse that she is going on break or asks if it is a good time to go on a break. Other witnesses testified that breaks were given in accordance with donor flow or following a

schedule made at the outset of a drive. Though various witnesses testified that charge nurses must give employees permission to take lunch and rest breaks, the evidence shows that this authority requires only routine clerical judgment and not independent judgment indicative of supervisory status.

The record evidence shows that charge nurses cannot end a blood drive early. Charge nurses cannot ask collections staff if they want to leave early if a blood drive is slow. They can allow an employee to go home when employees are ill or when they need to leave for some family reason. This limited authority to allow employees to go home does not require independent judgment and is insufficient to confer supervisory status on charge nurses. See *Azusa Ranch Market*, 321 NLRB 811, 812 (1996).

The Employer has failed to establish that charge nurses responsibly direct the work of collections employees. Responsible direction as required by Section 2(11) depends on whether the alleged supervisor is held fully responsible for the performance and work product of the employees he directs. *Schnurmacher Nursing Home v. NLRB*, 214 F.3d 260, 267 (2d Cir. 2000). The Employer argues that charge nurses are responsible for the mistakes made on documents submitted by them, even when the mistakes are not their own. However, the record does not reflect how charge nurses are held accountable for any of these mistakes. This lack of evidence on the record is construed against the Employer. *Elmhurst Extended Care Facilities*, 329 NLRB 535 fn. 8 (1999).

For the above reasons, I conclude that any judgment used by the charge nurses to assign work and direct collections teams is of such routine and clerical nature

that they do not meet the level of independent judgment required for supervisory status under *Kentucky River*.

2. The authority to discipline

The Employer contends charge nurses can issue verbal and written warnings. On one of the charge nurse reports entered into evidence by the Employer, a charge nurse wrote that she verbally warned an employee at the direction of a person named Eli. No witnesses with actual knowledge of the incident testified. Further, there was no evidence presented that this document led to any further discipline or that it was used against the person alleged to have received the verbal warning. The only charge nurse that testified at hearing stated that she had never disciplined an employee. If a problem arose at a work site, she would contact the team supervisor by telephone.

The Employer contends that charge nurses use their independent judgment in handling disciplinary problems. According to the Employer, charge nurses decide to speak to employees, to prepare a written warning to be placed in the employees file, or to recommend more serious consequences. However, the Employer provided no evidence showing that charge nurses actually have this authority. Instead, the Employer's own witnesses stated that charge nurses never suspend or discharge employees, and that it trains all of its employees to report problems at work. The record evidence establishes that counseling of employees is done by the team supervisor.

The Employer also contends that charge nurses can send employees home as punishment. The Employer presented only one example of a charge nurse sending an employee home. That example, however, was presented in a charge nurse's report without testimony from the charge nurse preparing the report or anyone else with direct

knowledge of the incident. There was evidence provided that demonstrated that the nurse actually sent the employee home without a supervisor's approval. To the contrary, record evidence shows that charge nurses do not have the authority to send employees home, as the charge nurse that testified stated that she did not have that authority.

The record fails to establish that charge nurses have the authority to send employees home or to issue any other type of discipline, or that such action occurs without independent investigation by higher management. To confer Section 2(11) status, the exercise of disciplinary authority must lead to personnel action without the independent investigation or review of other management personnel. *Beverly Health & Rehabilitation Services*, 335 NLRB 635 (2001). The Employer presented no evidence that charge nurses can issue discipline without independent investigation or review by management personnel. Again, conclusory testimony offered in support of this authority, without specific evidence of independent judgment, is insufficient to confer supervisory authority. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004). Thus, there is insufficient evidence of charge-nurse authority to discipline for a finding of supervisory status.

3. Authority to evaluate and reward

The Employer did not demonstrate that charge nurses have the authority to evaluate or reward employees. To the contrary, the one testifying charge nurse stated that she did not have this authority. The record evidence establishes that evaluation of the mobile operators has been done by the team supervisor. Additionally, competency evaluations for nurses, medical assistants, and mobile operators are all done by the team supervisor.

4. Adjustment of Grievances

The Employer contends that the charge nurses are responsible for mediating disputes between employees and are responsible for reporting employees if they cannot fix the disputes. This handling of “squabbles” between employees is considered routine and not supervisory. *St. Francis Medical Center – West*, 323 NLRB 1046, 1047-48 (1998).

5. Secondary indicia of supervisory authority

The Employer presented evidence of secondary indicia of supervisory status, such as attendance at meetings and taking additional classes. While the Board has examined other secondary factors not set forth in Section 2(11) of the Act, these factors, without more, are insufficient to establish supervisory status. *Ken-Crest Services, Inc.*, 335 NLRB 777, 779 (2001). Thus, attendance at meetings, and additional classes are, at most, secondary indicia which, in the absence of statutory indicia, are insufficient to establish supervisory status. *Auto West Toyota*, 284 NLRB 659, 661 (1987).

Accordingly, I conclude that the Employer has failed to meet its burden of establishing that charge nurses are supervisors. The case cited by the Employer in support of its position on supervisory status, *Super X Drugs of Texas, Inc.*, 217 NLRB 1103 (1975), is distinguishable. The pharmacists in that case had the authority to suspend employees, to grant time off or refuse to grant time off, to use independent judgment to assign specific tasks to specific employees, to determine when to call in replacements for absent employees, and to sign and approve payroll. As noted above, the charge nurses possess none of these authorities. As I have found the charge nurses to be employees and not supervisors, they are appropriately included in the professional unit.

IV. CONCLUSION

On the basis of the foregoing and the record as a whole, I find that the petitioned for units are appropriate, with the exception that licensed vocational nurses (“LVNs”) will be included in the nonprofessional unit rather than the professional unit. Additionally, I conclude that the charge nurses employed by the Employer in its San Diego region are not supervisors within the meaning of the Act. Finally, the charge nurses will be included in the petitioned-for professional unit. Accordingly, I find the following groups of employees constitute appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A

All full-time and regular part-time Registered Nurses (including charge nurses) employed by the Employer at its facilities located at 7675 Mesa College Drive, San Diego, California, and 460 East Pennsylvania Avenue, Escondido, California; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

Unit B

All full-time and regular part-time mobile operators, medical assistants, and Licensed Vocational Nurses employed by the Employer at its facilities located at 7675 Mesa College Drive, San Diego, California, and 460 East Pennsylvania Avenue, Escondido, California; excluding all other employees, telemarketing employees, the EBDR coordinator, the logistics coordinator, hospital services employees, the document control employee, administrative assistants, donor recruitment employees, customer service representatives, account managers, business development representatives, donor recruitment associates, volunteer coordinators, the scheduler, the department education coordinator, the apheresis coordinator, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

Elections by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the Military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Service Employees International Union, Local 535, and Teamsters Local 63, General Truck Drivers, Warehousemen and Helpers, International Brotherhood of Teamsters.**

There are approximately 15 employees in Unit A, and 38 employees in Unit B.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company* 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters in each unit shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994).

In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, **on or before May 18, 2006**. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (213)894-2778. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by **5 p.m., EST, on May 25, 2006**. This request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-

described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site:

www.nlr.gov.

Dated at Los Angeles, California, on May 11, 2006.

/s/ [Victoria E. Aguayo]
Victoria E. Aguayo,
Regional Director, Region 21
National Labor Relations Board,